

13 Am. Jur. 2d Carriers One IV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Carriers

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Part One. In General

IV. Use of Public Ways; Certificates and Permits; Registration

A. Intrastate Transportation

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West's Key Number Digest

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Part One. In General

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1. Certificates of Public Convenience and Necessity

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§ 120. Requirement to obtain public convenience and necessity certificate

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  73, 77

West's Key Number Digest, [Carriers](#)  8, 10

In many states there are statutes requiring common carriers by motor vehicle to obtain a certificate declaring that the public convenience and necessity require such operation.¹ The requirement of such a certificate as a condition of operation upon the public highways has been generally upheld as a valid exercise of the police power.² State statutes providing for the issuance of certificates of public convenience and necessity to common carriers by motor vehicle often provide that railroad companies may secure such certificates.³

The purpose of issuing certificates of public convenience and necessity is not for the advantage and benefit of the applicants requesting them but primarily the public convenience and general welfare.⁴ The object to be achieved is to foreclose the inordinate use of the public highways as a means of conducting carrier service for profit when there is no showing of public convenience or necessity therefor under the facts of a particular case.⁵ The services in which a holder of a certificate of public convenience may engage or which it is under obligation to perform depend on the services authorized or required by the certificate.⁶ Accordingly, when a certificate of public convenience authorizes the holder to transport certain products or materials, it may not transport other products or materials.⁷ Likewise, a carrier restricted by its certificate of public convenience to the use of certain types of vehicles or equipment may not use other equipment.⁸

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Footnotes

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¹ Stewart v. Mack, 66 So. 2d 811 (Fla. 1953); Application of Kilthau, 236 Neb. 811, 464 N.W.2d 162 (1991).

² In re Marriott, 218 Cal. 179, 22 P.2d 692 (1933).
As to the police power, generally, see Am. Jur. 2d, Constitutional Law §§ 332, 333.

³ Atlantic Coast Line R. Co. v. Mack, 57 So. 2d 447 (Fla. 1952); B. & N. Transp. v. Public Utilities Commission, 153 Ohio St. 441, 41 Ohio Op. 433, 92 N.E.2d 265 (1950).

⁴ Central Truck Lines v. Railroad Commission, 118 Fla. 555, 160 So. 26 (1935); Modern Motor Exp. v. Public Utilities Commission of Ohio, 154 Ohio St. 271, 43 Ohio Op. 162, 95 N.E.2d 764 (1950).

⁵ Central Truck Lines v. Railroad Commission, 118 Fla. 526, 160 So. 22 (1935).

⁶ AAA Cooper Transp. v. Louisiana Public Service Com'n, 623 So. 2d 1262 (La. 1993).

⁷ AAA Cooper Transp. v. Louisiana Public Service Com'n, 623 So. 2d 1262 (La. 1993).

⁸ AAA Cooper Transp. v. Louisiana Public Service Com'n, 623 So. 2d 1262 (La. 1993).

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  65, 107(.5) to 107(2)

West's Key Number Digest, [Carriers](#)  8

A certificate of public convenience and necessity is in the nature of a privilege granted in the public interest and therefore is construed in favor of the public and strictly against the recipient of the grant.¹ A certificate of public convenience does not guarantee the security of the common carrier's investment, and it does not grant the common carrier a monopoly.²

The operation of a common carrier by motor vehicle without a requisite certificate of public convenience and necessity may constitute an offense under a state statute.³

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Footnotes

¹ [AAA Cooper Transp. v. Louisiana Public Service Com'n](#), 623 So. 2d 1262 (La. 1993).

² [Susquehanna Area Regional Airport Authority v. Pennsylvania Public Utility Com'n](#), 911 A.2d 612 (Pa. Commw. Ct. 2006) (a certificate of public convenience does not trump the rights of other persons with an interest in how the common carrier operates).

³ [State ex rel. Sanders v. Ramsey](#), 137 Fla. 548, 189 So. 39 (1939).

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§ 122. Application for certificate of public convenience and necessity; notice

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  82, 83

As an initial step to obtaining a certificate of public convenience and necessity, a common carrier by motor vehicle is generally required by statute to submit a specified application therefor to a designated administrative body.¹ Notice of the application for a certificate of convenience and necessity is generally required to be given in a specified manner to certain interested persons.²

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Footnotes

¹ State ex rel. Seaboard Air Line R. Co. v. King, 93 So. 2d 368 (Fla. 1957).

² Erie R. Co. v. Public Utilities Commission of Ohio, 123 Ohio St. 682, 177 N.E. 766 (1931).

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§ 123. Hearing on application for certificate of public convenience and necessity

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  82, 83

In connection with an application for a certificate of public convenience and necessity, statutory provision is generally made for a hearing¹ at least when the application requests a certificate to serve a territory already served by a motor carrier holding a certificate.² However, in a hearing before a public utilities commission on an application for an irregular route certificate of public convenience and necessity, it is not improper to refuse to consider evidence from a party operating under temporary authority.³

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Footnotes

¹ Great Southern Trucking Co. v. Mack, 54 So. 2d 153 (Fla. 1951); Billings Yellow Cab, LLC v. State ex rel. Dept. of Public Service Regulation, 2014 MT 275, 376 Mont. 463, 335 P.3d 1223 (2014).

² Coney Island Motor Bus Corp. v. Public Utilities Commission of Ohio, 115 Ohio St. 47, 4 Ohio L. Abs. 323, 152 N.E. 25 (1926).

³ Masters v. Public Utilities Commission, 45 Ohio St. 2d 207, 74 Ohio Op. 2d 322, 343 N.E.2d 93 (1976).

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§ 124. Hearing on application for certificate of public convenience and necessity—Burden of proof

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  82, 83

In a proceeding to secure a certificate of public convenience and necessity for common carrier service by motor vehicle, the applicant has the burden of showing the requisite public convenience and necessity,¹ the inadequacy of existing transportation facilities or service,² and that the applicant is a person of the character and responsibility to whom such certificate should be issued.³ However, the burden is upon the protesting carriers on the question whether the granting of an application for a certificate will substantially impair their existing rights.⁴

The burden of proof is a preponderance of the evidence.⁵

A transportation company is entitled to a continuing presumption regarding its fitness to operate, in a proceeding to amend its certificate of public convenience to add services, where the company is an existing certificate holder.⁶

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¹ Great Southern Trucking Co. v. Mack, 54 So. 2d 153 (Fla. 1951); L & B Transport Co., Inc. v. Louisiana Public Service Com'n, 602 So. 2d 712 (La. 1992); Alspaugh v. Public Utilities Commission, 146 Ohio St. 267, 32 Ohio Op. 287, 65 N.E.2d 263 (1946).

- ² L & B Transport Co., Inc. v. Louisiana Public Service Com'n, 602 So. 2d 712 (La. 1992); Alspaugh v. Public Utilities Commission, 146 Ohio St. 267, 32 Ohio Op. 287, 65 N.E.2d 263 (1946).
- ³ Mile High Cab, Inc. v. Colorado Public Utilities Commission, 2013 CO 26, 302 P.3d 241 (Colo. 2013); L & B Transport Co., Inc. v. Louisiana Public Service Com'n, 602 So. 2d 712 (La. 1992); Alspaugh v. Public Utilities Commission, 146 Ohio St. 267, 32 Ohio Op. 287, 65 N.E.2d 263 (1946).
- ⁴ Pennsylvania R. Co. v. Public Utilities Commission of Ohio, 126 Ohio St. 260, 185 N.E. 49 (1933).
- ⁵ Mile High Cab, Inc. v. Colorado Public Utilities Commission, 2013 CO 26, 302 P.3d 241 (Colo. 2013).
- ⁶ Lehigh Valley Transp. Services, Inc. v. Pennsylvania Public Utility Com'n, 56 A.3d 49 (Pa. Commw. Ct. 2012).

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§ 125. Considerations in grant or denial of certificate of public convenience and necessity

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  78, 82, 83

For purposes of evaluating applications for common carrier certificates, public convenience and necessity is a dynamic and flexible concept that is not susceptible to a rigid or precise definition; it must be determined on a case-by-case basis.¹

The factors generally considered in determining whether a certificate of public convenience and necessity will be granted are (1) whether there is an existing public need for the proposed carrier's service; (2) whether the proposed carrier has the ability to provide economical, comfortable, and convenient service for the geographical area; and (3) what economic and competitive impact the proposed carrier would have upon existing carriers providing similar service within the same territory.² Alternatively, it has been stated that in determining the public convenience and necessity under a statute governing the issuance of certificates for intrastate motor carriers, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest.³

A demonstration of mere business attrition of a competitor is insufficient to deny a certificate of public convenience to allow operation of a common carrier,⁴ and general fears of potential diversion, as contrasted with specific evidence indicating probable harm, do not constitute proof that harm will result to competitive carriers because of an application for a certificate to operate as a common carrier.⁵

There must be a finding of both public convenience and necessity; a showing of public convenience alone is not enough, the term "necessity" not being synonymous with "convenience" or an alternative thereto, since the primary consideration

underlying the granting of a certificate for the operation of a transportation system is the public need for such service.⁶ “Necessity,” for the purposes of a carrier’s application for a certificate of public convenience, means reasonably necessary and not absolutely imperative; thus, a proposed service is deemed necessary if it appears reasonably requisite and is suited to and tends to promote the accommodation of the public.⁷ Moreover, in order to issue a carrier a certificate of public convenience and necessity to operate as a common motor carrier, a public services commission does not have to find a public need for the proposed service; rather, it can issue the certificate if it finds that the proposed service will benefit the public.⁸

In determining whether an applicant for a common carrier’s certificate has established public convenience and necessity, the substance of shipper support, not the numerical quantity of it, is determinative.⁹ However, while the needs and preferences of one shipper may be some evidence of public need for the purposes of determining whether to award a certificate to a common carrier, they are neither dispositive nor immaterial; therefore, a public utility commission may consider the testimony of a single shipper concerning public need, weigh the testimony, and determine its significance.¹⁰

In the absence of an affirmative finding of public convenience and necessity based on a sufficient factual showing to substantially support it, the public authority is without authority to grant its approval for the service proposed.¹¹ The performance of unlawful services does not necessarily render an applicant unfit to receive a certificate from a public service commission to transport passengers, at least where the record shows that there was no willful and intentional violation.¹²

Observation:

A public utilities commission (PUC) is deemed to have acted within its authority in granting a motor carrier certificate to a tours and transportation company where the PUC found that ridership statistics warranted an additional carrier between certain locations, that improved transportation would increase customers and benefit retailers and tourism in general, and that the certificate would encourage competition and constrain otherwise monopolistic operations.¹³

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Footnotes

- ¹ Vacuum Truck Carriers of Louisiana, Inc. v. Louisiana Public Service Com’n, 12 So. 3d 932 (La. 2009).
- ² Groome Transp., Inc. v. Virginia Dept. of Motor Vehicles, 27 Va. App. 682, 500 S.E.2d 852 (1998).
- ³ McGree Corporation v. Montana Public Service Commission, 2019 MT 75, 395 Mont. 229, 438 P.3d 326 (2019); Application of Nebraskaland Leasing & Associates, 254 Neb. 583, 578 N.W.2d 28 (1998).
- ⁴ Capital City Cab Service v. Pennsylvania Public Utility Com’n, 138 A.3d 119 (Pa. Commw. Ct. 2016).
- ⁵ Application of Nebraskaland Leasing & Associates, 254 Neb. 583, 578 N.W.2d 28 (1998).
- ⁶ Penn-Ohio Coach Lines Co. v. Public Utilities Commission of Ohio, 140 Ohio St. 263, 23 Ohio Op. 464, 43 N.E.2d 226 (1942).
- ⁷ Groome Transp., Inc. v. Virginia Dept. of Motor Vehicles, 27 Va. App. 682, 500 S.E.2d 852 (1998).
- ⁸ Motor Cargo v. Public Service Com’n of Nevada, 108 Nev. 335, 830 P.2d 1328 (1992).
- ⁹ Mississippi Chemical Exp., Inc. v. Louisiana Public Service Com’n, 637 So. 2d 93 (La. 1994).
- ¹⁰ Trans-Western Exp., Ltd. v. Public Utilities Com’n of State, 877 P.2d 350 (Colo. 1994).

¹¹ Great Southern Trucking Co. v. Mack, 54 So. 2d 153 (Fla. 1951).

¹² Application of A Touch of Class Limousine, Inc., 243 Neb. 33, 497 N.W.2d 71 (1993); Mapemawa, Inc. v. Philadelphia Parking Authority, 59 A.3d 1171 (Pa. Commw. Ct. 2013).

¹³ In re Robert's Tours & Transp., Inc., 104 Haw. 98, 85 P.3d 623 (2004).

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b. Procedure Relating to Grant or Denial of Certificates; Judicial Review

§ 126. Considerations in grant or denial of certificate of public convenience and necessity—Adequacy of existing facilities

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  78, 82, 83

In determining that there exists public convenience and necessity for the transportation services proposed, the public authority is required to take into consideration other existing transportation facilities, and if it appears that the service furnished by the existing transportation facilities is reasonably adequate, the public authority, as a rule, may not grant the certificate.¹ “Public need or demand,” a showing of which must be made by a motor carrier seeking a new or additional common carrier certificate, contemplates that there is an identifiable public need for a transportation service for which there exists no adequate public service.² In other states, however, proof of adequate market service does not bar the entry of new applicants for a common carrier certificate.³

In some jurisdictions, the existence of adequate and satisfactory service by motor carriers already in the area completely negates the public need and demand requirement for added service by another carrier.⁴ An existing carrier may prevent a new applicant's market entry by showing that public harm would result because of unrestrained and destructive competition in the proposed market.⁵ A finding of public convenience and necessity is not justified unless the existing service is determined to be substantially inadequate,⁶ and a certificate should be granted only when the existing transportation facilities do not and cannot be made to meet the demands of public convenience.⁷

However, there is authority holding that while an applicant for a common carrier's certificate is generally required to establish the inadequacy of existing service, an existing carrier applicant is not required to do so and may establish the public need for its services by introducing evidence of its prior successful operations.⁸ There is also authority holding that a showing of inadequate service is not required to allow a public service commission to issue a common carrier a certificate of public

convenience and necessity.⁹

Deficiencies in advertising and solicitation by an established motor carrier are proper considerations for a public utilities commission in its determination of whether existing service is adequate, since awareness of available service by the shipping public is relevant to a meeting of the public need.¹⁰

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Footnotes

- ¹ [Beiter Line, Inc. v. Public Utilities Commission](#), 165 Ohio St. 1, 59 Ohio Op. 30, 133 N.E.2d 135 (1956). "Public convenience and necessity" considers the adequacy of the existing service as well as whether a duplication of facilities will occur. [Applications of Mission Petroleum Carriers, Inc.](#), 1992-NMSC-020, 113 N.M. 477, 827 P.2d 1291 (1992).
- ² [AAA Cooper Transp. v. Louisiana Public Service Com'n](#), 623 So. 2d 1262 (La. 1993).
- ³ [Capital City Cab Service v. Pennsylvania Public Utility Com'n](#), 138 A.3d 119 (Pa. Commw. Ct. 2016).
- ⁴ [Billings Yellow Cab, LLC v. State ex rel. Dept. of Public Service Regulation](#), 2014 MT 275, 376 Mont. 463, 335 P.3d 1223 (2014); [Application of Nebraskaland Leasing & Associates](#), 254 Neb. 583, 578 N.W.2d 28 (1998).
- ⁵ [Capital City Cab Service v. Pennsylvania Public Utility Com'n](#), 138 A.3d 119 (Pa. Commw. Ct. 2016).
- ⁶ [Yellow Cab Co-op. Ass'n v. Public Utilities Com'n of State of Colo.](#), 869 P.2d 545 (Colo. 1994).
- ⁷ [Reeves v. Queen City Transp.](#), 10 F. Supp. 2d 1181 (D. Colo. 1998) (applying Colorado law; the state public utilities commission must deny an application for common carrier authority unless the existing service is determined to be substantially inadequate); [McGree Corporation v. Montana Public Service Commission](#), 2019 MT 75, 395 Mont. 229, 438 P.3d 326 (2019) (an application for expanded licensure was supported by evidence of a public need for fair pricing and better customer service and that the existing service issues would not improve without the threat of competition).
- ⁸ [Mississippi Chemical Exp., Inc. v. Louisiana Public Service Com'n](#), 637 So. 2d 93 (La. 1994).
- ⁹ [Motor Cargo v. Public Service Com'n of Nevada](#), 108 Nev. 335, 830 P.2d 1328 (1992).
- ¹⁰ [Masters v. Public Utilities Commission](#), 45 Ohio St. 2d 207, 74 Ohio Op. 2d 322, 343 N.E.2d 93 (1976).

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§ 127. “Grandfather clause” in relation to certificate of public convenience and necessity

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West’s Key Number Digest

West’s Key Number Digest, [Automobiles](#)  60, 74, 78, 82, 83

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[Construction of “grandfather clause” of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667](#)

In conjunction with the enactment of regulations requiring common carriers by motor vehicle to secure certificates of public convenience and necessity as a condition of their operation upon the public highways, so-called “grandfather clauses” have been enacted which in effect automatically extend the prerogatives of such certificates to motor carriers already established in the business. Such clauses serve to avoid hardships which might result from forcing a motor carrier to justify its existing business in terms of public convenience and necessity and recognize such rights as vested.¹ A statute allowing an intrastate charter bus service to be “grandfathered” does not violate the due process clause, where the legislature has the statutory power to regulate motor carriers, and the grandfather clause recognizes a legitimate need to protect certain carriers.² Ordinarily, the grandfathered rights conferred by statutes concerning the issuance of certificates of public convenience and necessity to carriers are limited to such operations as the carrier claiming such rights was engaged in on the critical date of the particular grandfather clause.³

An applicant under a grandfather clause for a certificate of public convenience and necessity must have both the direction and

the control of the motor vehicles which it uses for the carrying so that it is responsible both to the shipper and to the general public for their operation. It must stand, with respect to the motor vehicles which it uses, in the relation of proprietor by the virtue of ownership, lease, or other arrangement, and mere use in the absence of control and direction, even though exclusive, is not enough.⁴

Operation by a partnership prior to the effective date of a statute providing for the issuance of a certificate of public convenience and necessity to a motor carrier actually operating in good faith on such date does not inure to the benefit of an individual member of the partnership.⁵ Similarly, operation by an individual prior to the effective date of the statute does not inure to the benefit of a corporation so as to entitle it to a certificate as a matter of right, even though the stock of the corporation is substantially owned by the person who had theretofore operated as an individual.⁶ However, there is other authority holding that the right to a certificate of public convenience and necessity is not limited to such person, firm, or corporation as was actually operating on the date specified but extends to anyone associated with them at or after such date.⁷

The term “bona fide operation” as used in a grandfather clause is satisfied when the operation has been real and substantial, not something made of straw as a pretense or sham, and has been openly and honestly conducted.⁸ Thus, the mere holding out to conduct transportation without actual transportation does not show a bona fide operation within the meaning of a grandfather clause.⁹

Operations by a carrier in defiance of the law during the period or on the date of operations specified as a condition to obtaining a certificate of public convenience and necessity as a matter of right do not constitute such an operation as would qualify it for the privilege.¹⁰

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Footnotes

- ¹ [Com. Air Transport v. Stuart](#), 303 Ky. 69, 196 S.W.2d 866 (1946).
As to grandfather clauses for contract or private carriers, see § 138.
- ² [Shockey Tours, Inc. v. Miller Transp., Inc.](#), 984 S.W.2d 95 (Ky. 1998).
- ³ [Gulf, M. & O. R. Co. v. Luter Motor Express](#), 190 Miss. 523, 1 So. 2d 231 (1941).
- ⁴ [Allied Van Lines v. Maltbie](#), 265 A.D. 979, 38 N.Y.S.2d 617 (3d Dep’t 1942).
Evidence that an applicant was employed by another person who was in fact the one actually operating supported a denial of a certificate. [Gruber v. Commonwealth](#), 140 Va. 312, 125 S.E. 427 (1924).
- ⁵ [Westhoven v. Public Utilities Commission of Ohio](#), 112 OHIOST 411, 3 Ohio L. Abs. 269, 147 N.E. 759 (1925).
- ⁶ [Red Ball Transit Co. v. Public Utilities Commission of Ohio](#), 112 Ohio St. 462, 3 Ohio L. Abs. 279, 147 N.E. 762 (1925).
- ⁷ [Carroll v. Commonwealth](#), 140 Va. 305, 125 S.E. 433 (1924).
- ⁸ [Germenko v. Public Service Commission](#), 226 Md. 295, 173 A.2d 362 (1961); [Gulf, M. & O. R. Co. v. Luter Motor Express](#), 190 Miss. 523, 1 So. 2d 231 (1941).
- ⁹ [Santini Bros. v. Maltbie](#), 260 A.D. 545, 23 N.Y.S.2d 566 (3d Dep’t 1940).
- ¹⁰ [Rowley v. Public Service Commission](#), 112 Utah 116, 185 P.2d 514 (1947).

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§ 128. Judicial review of order granting or denying application for certificate

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  84, 85, 107(2)

Statutory provision is generally made for the judicial review of orders of administrative agencies granting or denying an application for a certificate of public convenience and necessity.¹

Upon judicial review, the findings of a public service commission on whether an applicant for a certificate of public convenience and necessity for a new motor carrier service has made the necessary showing are accorded great weight and will not be overturned unless the finding is based on an error of law or is one which the commission reasonably could not have made from the evidence.² In other words, in a proceeding for a certificate to operate as a common carrier, an order of the administrative agency decision will not be disturbed on appeal unless its findings are contrary to the evidence, are without evidence to support them, are arbitrary, or result from a misapplication of legal principles.³

Issues of public convenience and necessity are ordinarily issues of fact, and when there is evidence in the record to sustain a public service commission's order, an appellate court may not find the order unreasonable and arbitrary.⁴ It is not the appellate court's role to reweigh the evidence, rejudge the credibility of witnesses, or substitute its findings for those of the commission.⁵

Similarly, the question of the adequacy of the existing service is one reserved for a public utilities commission in ruling on applicants for certificates of public convenience and necessity; thus, if there is sufficient probative evidence in the record to support the commission's deficiency finding, that finding will not be disturbed.⁶

Footnotes

- ¹ [Commercial Motor Freight v. Public Utilities Commission of Ohio](#), 138 Ohio St. 151, 20 Ohio Op. 134, 33 N.E.2d 989 (1941).
As to judicial review of agency determinations, generally, see [Am. Jur. 2d, Administrative Law §§ 383 to 399](#).
- ² [L & B Transport Co., Inc. v. Louisiana Public Service Com'n](#), 602 So. 2d 712 (La. 1992).
- ³ [Solid Waste Services of West Virginia v. Public Service Com'n](#), 188 W. Va. 117, 422 S.E.2d 839 (1992).
The record did not clearly contain a finding that was statutorily required for the Colorado Public Utilities Commission to deny a business's application for a certificate of public convenience and necessity, specifically a finding that opposing carriers proved by a preponderance of the evidence that the public convenience and necessity did not require granting the application and that the issuance of a certificate would actually be detrimental to the public interest, and thus, the commission did not regularly pursue its authority, so as to warrant reversal of the trial court's affirmance of the commission's denial of the application and remand with directions to return the matter to the commission. [Mile High Cab, Inc. v. Colorado Public Utilities Commission](#), 2013 CO 26, 302 P.3d 241 (Colo. 2013).
- ⁴ [Application of Nebraskaland Leasing & Associates](#), 254 Neb. 583, 578 N.W.2d 28 (1998).
- ⁵ [Mississippi Chemical Exp., Inc. v. Louisiana Public Service Com'n](#), 637 So. 2d 93 (La. 1994).
- ⁶ [Canton Storage & Transfer Co. v. Pub. Util. Comm.](#), 72 Ohio St. 3d 1, 1995-Ohio-282, 647 N.E.2d 136 (1995).

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13 Am. Jur. 2d Carriers § 129

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Carriers

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IV. Use of Public Ways; Certificates and Permits; Registration

A. Intrastate Transportation


1. Certificates of Public Convenience and Necessity

c. Transfer of Certificate of Public Convenience and Necessity

§ 129. Statutory authority to transfer certificate of public convenience and necessity

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  105

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[Carrier's certificate of convenience and necessity, franchise, or permit as subject to transfer or encumbrance, 15 A.L.R.2d 883](#)

In the absence of statutory authority, a certificate of public convenience and necessity is not transferable and does not pass by assignment, succession, descent, or any other process from the holder to anyone else.¹ However, there is other authority holding that a certificate of public convenience and necessity is transferable without express legislative consent.²

In other jurisdictions, the statutes providing for the issuance of certificates of public convenience and necessity expressly permit the transfer of such certificates.³

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Footnotes

- ¹ Application of Neylon, 151 Neb. 587, 38 N.W.2d 552 (1949); Estabrook v. Public Utilities Commission of Ohio, 112 Ohio St. 417, 3 Ohio L. Abs. 268, 147 N.E. 761 (1925).
- ² Beard-Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948); F.A. Jewett & Son v. Smardon, 101 Vt. 488, 144 A. 683 (1929).
- ³ In re Gray Line Hawaii Ltd., 93 Haw. 45, 995 P.2d 776 (2000); Red Eagle Bus Co. v. Public Utilities Commission of Ohio, 124 Ohio St. 625, 11 Ohio L. Abs. 416, 180 N.E. 261 (1932).

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A. Intrastate Transportation


1. Certificates of Public Convenience and Necessity

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§ 130. Application for and approval of transfer of certificate of public convenience and necessity

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  105

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Generally, the statutes permitting the transfer of certificates of convenience and necessity provide for the approval of such transfers by the administrative agency issuing such certificates so that obtaining the particular agency's approval is necessary to effectuate a transfer.¹ Such approval is not a perfunctory approval to be given as a matter of form in all cases,² and there must be a hearing after due notice to all the parties interested.³ The transfer of a certificate of convenience and necessity is essentially a granting of the certificate in the first instance, and an interest considered in the original application should be considered in a transfer; thus, the transfer of trucking company certificates without notice and without a hearing, although unchallenged in a court or the legislature, is illegal.⁴

The chief inquiry at a hearing to transfer a certificate to operate as a common carrier is the ability of the proposed new certificate holder to carry on the business.⁵ In some cases, proof of public convenience and necessity has been held necessary on an application for the transfer of a certificate of convenience and necessity,⁶ but in other jurisdictions, such proof is not necessary,⁷ since it is presumed that such public convenience or necessity has been determined when the original certificate was issued.⁸ Where the holder of the certificate has become dormant, the agency may cancel the certificate,⁹ and the applicant for transfer must then show that the statutory requirements for issuance of the certificate exist.¹⁰ When "reasonably continuous service" is statutorily required prior to the transfer of a common carrier's certificate of public convenience and necessity, the finding of such service depends on the particular circumstances and the type of certificate authority held.¹¹

A statute prohibiting the transfer of a certificate of common carriage unless the carrier has operated pursuant to such

certificate for a period of at least six months does not permissibly conflict with a constitutional grant of power to a public service commission to regulate motor carriers.¹²

The statutes providing for the transfer of certificates of convenience and necessity are generally permissive in nature and not mandatory; thus, the action of the administrative agency in refusing a transfer application will be sustained unless it appears that the refusal was unreasonable or arbitrary.¹³

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Footnotes

- ¹ Gregory v. Lewis, 205 Ark. 68, 167 S.W.2d 499 (1943); Application of Burlington Truck Lines, Inc., 170 Neb. 331, 102 N.W.2d 450 (1960).
- ² Falwell v. U.S., 69 F. Supp. 71 (W.D. Va. 1946), judgment aff'd, 330 U.S. 807, 67 S. Ct. 1087, 91 L. Ed. 1264 (1947).
- ³ Hazard-Hyden Bus Co. v. Black, 301 Ky. 426, 192 S.W.2d 195 (1946).
- ⁴ Smith & Smith, Inc. v. South Carolina Public Service Commission, 271 S.C. 405, 247 S.E.2d 677 (1978).
- ⁵ Solid Waste Services of West Virginia v. Public Service Com'n, 188 W. Va. 117, 422 S.E.2d 839 (1992).
- ⁶ Application of Calhoun, 51 Wyo. 448, 68 P.2d 591 (1937).
- ⁷ In re Gray Line Hawaii Ltd., 93 Haw. 45, 995 P.2d 776 (2000); Murphy v. Public Service Commission of Utah, 539 P.2d 367 (Utah 1975).
- ⁸ Morris v. Public Service Commission, 7 Utah 2d 167, 321 P.2d 644 (1958); Park Bros. Moving Corp. v. S & M Systems Corp., 216 Va. 322, 218 S.E.2d 441 (1975).
- ⁹ Dade Truck Sales, Inc. v. Bevis, 366 So. 2d 759 (Fla. 1978).
- ¹⁰ Application of Jeffries-Eaves, Inc., 173 Neb. 337, 113 N.W.2d 476 (1962).
- ¹¹ AA Oilfield Service, Inc. v. New Mexico State Corp. Com'n, 1994-NMSC-085, 118 N.M. 273, 881 P.2d 18 (1994).
- ¹² Herman Bros., Inc. v. Louisiana Public Service Com'n, 564 So. 2d 294 (La. 1990).
- ¹³ Application of Transit Homes, Inc., 173 Neb. 391, 113 N.W.2d 638 (1962).
As to the judicial review of discretionary actions of an administrative agency, generally, see Am. Jur. 2d, Administrative Law § 429.

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§ 131. Partial transfer of certificate of public convenience and necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 105

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Under some authority, in the absence of an express statutory provision, an administrative agency whose consent is necessary to effectuate the transfer of a certificate of public convenience and necessity is not vested with the authority to consent to a partial transfer of the certificate.¹ However, there is other authority holding that a partial transfer of a certificate of convenience and necessity may be approved even though there are no express statutory provisions providing for such a transfer.² A public utility commission may modify the description of the transferred operating rights in a company's certificate of public convenience to omit a portion of the description within a certain geographic area, where the commission does not have authority to grant operating rights within that omitted area.³

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Footnotes

¹ [Braddock v. Public Utilities Commission](#), 137 Ohio St. 59, 17 Ohio Op. 378, 27 N.E.2d 1016 (1940).

² [Central Truck Lines, Inc. v. Carter](#), 113 So. 2d 841 (Fla. 1959); [Beard-Laney, Inc. v. Darby](#), 213 S.C. 380, 49 S.E.2d 564 (1948).

Part of a motor carrier's certificate of public convenience and necessity relating to the hauling of heavy items requiring the use of special equipment because of size and weight could be transferred to a second motor carrier as long as the transferee was qualified to assume operation under the certificate, and the public interest was not harmed thereby. [Eagle Motor Lines, Inc. v. Alabama Public Service Commission](#), 343 So. 2d 767 (Ala. 1977).

³ [Pennsylvania Transportation Service, Inc. v. Pennsylvania Public Utility Commission, 165 A.3d 1033 \(Pa. Commw. Ct. 2017\)](#) (the commission could not authorize rights within the City of Philadelphia).

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1. Certificates of Public Convenience and Necessity

d. Amendment, Revocation, or Suspension of Certificate of Public Convenience and Necessity; Judicial Review

§ 132. Authority to amend, revoke, or suspend certificate of public convenience and necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 106

West's Key Number Digest, [Carriers](#) 8

In many jurisdictions, the public agency issuing certificates of public convenience and necessity has the statutory power to amend, revoke, or suspend them.¹ However, a statute providing that no common motor carrier can discontinue any service without an order of the public service commission, and allowing the commission to issue an order to any carrier operating in violation of that statute to cease and desist does not grant the commission the power of revocation of the certificate.²

The power to amend, revoke, or suspend a certificate of convenience and necessity, when present, is not absolute but rests in the sound discretion of the issuing agency.³ There must be adequate grounds for such action,⁴ and the holder must be given notice thereof and an opportunity to be heard.⁵

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¹ [Dworkin, Inc. v. Public Utilities Commission, 159 Ohio St. 174, 50 Ohio Op. 144, 111 N.E.2d 389 \(1953\); Pennsylvania Transportation Service, Inc. v. Pennsylvania Public Utility Commission, 165 A.3d 1033 \(Pa. Commw. Ct. 2017\).](#)

² [Manke Truck Lines, Inc. v. Public Service Com'n of Nev., 109 Nev. 1034, 862 P.2d 1201 \(1993\).](#)

³ [Columbus Motor Exp. v. Public Utilities Commission of Ohio, 126 Ohio St. 11, 183 N.E. 782 \(1932\).](#)

[4](#) [§ 133.](#)

[5](#) [§ 134.](#)

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d. Amendment, Revocation, or Suspension of Certificate of Public Convenience and Necessity; Judicial Review

§ 133. Grounds to amend, revoke, or suspend certificate of public convenience and necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  106

West's Key Number Digest, [Carriers](#)  8

Under some statutes, a certificate of public convenience and necessity may be amended or revoked only for due cause or good cause,¹ which has been construed to include a failure to comply with a requirement exacted as a condition precedent to the issuance of the certificate.² The violation of a rule or order of the administrative agency issuing such certificates is generally held to constitute grounds for the amendment or revocation of a public certificate of convenience and necessity,³ although it has been held that revocation of the certificate is not mandatory under such circumstances.⁴

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¹ [Midwestern Motor Transit v. Public Utilities Commission of Ohio](#), 126 Ohio St. 317, 185 N.E. 194 (1933); [Pennsylvania Transportation Service, Inc. v. Pennsylvania Public Utility Commission](#), 165 A.3d 1033 (Pa. Commw. Ct. 2017).

² [Midwestern Motor Transit v. Public Utilities Commission of Ohio](#), 126 Ohio St. 317, 185 N.E. 194 (1933).

³ [Dworkin, Inc. v. Public Utilities Commission](#), 159 Ohio St. 174, 50 Ohio Op. 144, 111 N.E.2d 389 (1953). A taxicab driver's lack of a valid driver's permit, inspection sticker, and fully functioning credit/debit card acceptance machine were grounds for the revocation of her certificate of public necessity and convenience. [Vincent v. Munster](#), 206 So. 3d 1040 (La. Ct. App. 4th Cir. 2016).

⁴ [Texas & Pacific Motor Transp. Co. v. Railroad Commission of Tex., 124 Tex. 126, 73 S.W.2d 509 \(1934\).](#)

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§ 134. Notice and hearing to amend, revoke, or suspend certificate of public convenience and necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  106

West's Key Number Digest, [Carriers](#)  8

The statutes providing for the amendment, revocation, or suspension of a certificate of public convenience and necessity generally provide that the holder must be given notice and an opportunity to be heard.¹ Certificate holders are also entitled to procedural due process, which includes, among other things, the ability to discover information relevant to the case against them, along with the identity of the witnesses who are expected to testify and the substance of the expected testimony.²

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¹ [Wilson v. Department of Public Service Regulation](#), 260 Mont. 167, 858 P.2d 368 (1993); [Buckeye Stages v. Public Utilities Commission of Ohio](#), 127 Ohio St. 575, 190 N.E. 219 (1933).

² [Wilson v. Department of Public Service Regulation](#), 260 Mont. 167, 858 P.2d 368 (1993).

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d. Amendment, Revocation, or Suspension of Certificate of Public Convenience and Necessity; Judicial Review

§ 135. Judicial review of order amending, revoking, or suspending certificate of public convenience and necessity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  84, 107(2)

Statutory provision is generally made for the judicial review of orders of administrative agencies amending, revoking, or suspending a certificate of public convenience and necessity.¹ Such an order will be set aside only if the agency acted illegally, abused its authority, or acted arbitrarily.²

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¹ [Blue Motor Transp. Co. v. Public Utilities Commission of Ohio](#), 131 Ohio St. 66, 5 Ohio Op. 371, 1 N.E.2d 613 (1936).

As to judicial review of agency determinations, generally, see [Am. Jur. 2d, Administrative Law §§ 383 to 389](#).

² [Atlantic Coast Line R. Co. v. Railroad Com'n](#), 149 Fla. 245, 5 So. 2d 708 (1942).

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A. Intrastate Transportation

2. Private or Contract Motor Carrier Permits

§ 136. Authority to issue permit for private and contract carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  77, 78

West's Key Number Digest, [Carriers](#)  8

In many states, statutes require private motor carriers or contract carriers by motor vehicle, as such terms are defined therein, to obtain a permit as a prerequisite to operate as a carrier within the state.¹ Such a permit is a revocable license which confers no property rights upon the holder.²

A regulatory statute may prohibit the same carrier from operating both as a common carrier and as a contract carrier, but such a statute does not prohibit a carrier from engaging in both common and contract carriage as long as the same goods are not carried between the same points in both capacities.³

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¹ [Orlando Transit Co. v. Florida R.R. & Public Utilities Com'n](#), 160 Fla. 795, 37 So. 2d 321 (1948); [Carlson Auction Service, Inc. v. Kansas Corporation Commission](#), 55 Kan. App. 2d 345, 413 P.3d 448 (2018); [Ohio Transport v. Public Utilities Commission](#), 164 Ohio St. 98, 57 Ohio Op. 108, 128 N.E.2d 22 (1955).
As to who are private or contract carriers, see § 3.

² [Ohio Transport v. Public Utilities Commission](#), 164 Ohio St. 98, 57 Ohio Op. 108, 128 N.E.2d 22 (1955).
As to licenses granted under a municipality's police power, see [Am. Jur. 2d, Licenses and Permits § 14](#).

³ [Alves v. Public Utilities Com'n of California](#), 41 Cal. 2d 344, 260 P.2d 785 (1953).

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2. Private or Contract Motor Carrier Permits

§ 137. Grant or denial of permit for private and contract carriers

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 77, 78

West's Key Number Digest, [Carriers](#) 8

In ruling on an application to institute a new operation as a private or contract carrier by motor vehicle, a state public service commission is required to determine that the proposed operation sought to be authorized by the permit will be consistent with the public interest and that the applicant is fit, willing, and able to properly perform the service of a contract carrier by motor vehicle and will conform to the statutory provisions and the lawful rules, requirements, and regulations of the commission.¹

Observation:

The “consistent with public interest” standard for obtaining a private or contract carrier permit is much less exacting than the “public convenience and necessity” standard for the issuance of a common carrier certificate.²

The permit should be granted when a common carrier cannot extend the preferential service or other advantages of a contract carrier, and the granting of such a permit will not tend to materially inhibit the ability of the protesting common carriers to service the public.³ In deciding whether to issue a permit for contract carrier authority, a public service commission must weigh the distinct needs of a shipper or shippers against the effect on and inadequacy of the existing common carrier service.⁴ Evidence that the existing common carriers can satisfy the distinct needs of a shipper as well as the contract carrier renders

the issuance of a contract carrier permit inconsistent with the public interest; however, the mere fact that the services of the common carriers are “adequate” to fulfill a shipper’s needs is not conclusive if the applicant’s service is better designed to fit a shipper’s special requirements.⁵ A public utilities commission may consider a motor vehicle contract carrier’s ancillary, nontransportation services in determining whether the carrier is offering distinctly different or superior service to that offered by an authorized common carrier, even though the provision of such other services does not necessarily render the contract carrier’s service noncompetitive in relation to the common carrier’s service.⁶

An applicant for a permit to operate as a contract carrier must establish to the satisfaction of the public service commission that the privilege sought will not impair the efficient public service of any authorized common carrier or common carriers adequately serving same territory, especially when a protest to the application is received from a common carrier serving the same territory.⁷

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Footnotes

- ¹ [Vulcan Freight Lines, Inc. v. K & B Hauling Co., Inc.](#), 621 So. 2d 248 (Ala. 1993).
- ² [Application of Northland Transp., Inc.](#), 239 Neb. 918, 479 N.W.2d 764 (1992).
The phrase “public convenience and necessity,” in a statute governing the issuance of livery service permits, was ambiguous in that it did not establish the factors that the state department of transportation must consider when determining whether a permit applicant has established that the new service will improve public convenience and necessity. [Martorelli v. Department of Transp.](#), 316 Conn. 538, 114 A.3d 912 (2015).
As to the considerations in the grant or denial of a common carrier application, see §§ 125, 126.
- ³ [Vulcan Freight Lines, Inc. v. K & B Hauling Co., Inc.](#), 621 So. 2d 248 (Ala. 1993).
- ⁴ [Application of Northland Transp., Inc.](#), 239 Neb. 918, 479 N.W.2d 764 (1992).
- ⁵ [Application of Northland Transp., Inc.](#), 239 Neb. 918, 479 N.W.2d 764 (1992).
- ⁶ [Ace West Trucking, Inc. v. Public Utilities Com’n of State of Colo.](#), 788 P.2d 755 (Colo. 1990).
- ⁷ [Community Moving & Storage, Inc. v. Public Service Com’n of West Virginia](#), 192 W. Va. 636, 453 S.E.2d 619 (1994).

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2. Private or Contract Motor Carrier Permits

§ 138. “Grandfather clause”; private permits

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West’s Key Number Digest, [Automobiles](#)  77, 78

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[Construction of “grandfather clause” of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667](#)

In conjunction with the enactment of regulations requiring private carriers or contract carriers by motor vehicle to secure permits as a condition of their operation upon the public highways, so-called “grandfather clauses” have been enacted which in effect automatically extend the prerogatives of such permits to those motor carriers theretofore established in the business.¹ The purpose of such a clause is to recognize and continue in force, as a matter of right, service performed bona fide by private or contract motor carriers on the effective date of the act without the necessity of establishing that the applicant for a permit is fit and able to perform such service or of showing that the proposed service is in the public interest.²

The operations by a motor carrier in defiance of the law during the period or on the date of operations specified as a condition to obtaining a permit as a matter of right do not constitute such an operation as will qualify the carrier for the privilege.³

A common carrier is not entitled to a permit as a contract carrier under a grandfather clause when the definition of a contract carrier specifically excludes common carriers from that class.⁴

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Footnotes

- ¹ [Rowley v. Public Service Commission, 112 Utah 116, 185 P.2d 514 \(1947\).](#)
As to grandfather clauses for common carriers, generally, see § 127.
- ² [Puhl v. Pennsylvania Public Utility Commission, 139 Pa. Super. 152, 11 A.2d 508 \(1940\).](#)
- ³ [Rowley v. Public Service Commission, 112 Utah 116, 185 P.2d 514 \(1947\).](#)
- ⁴ [Infantino v. Pennsylvania Public Utility Commission, 146 Pa. Super. 245, 22 A.2d 108 \(1941\).](#)

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